TED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):

Alexandre Marc Jacques Brouaux

**APPLICATION NO.:** 

09/663,296

FILING DATE:

September 15, 2000

TITLE:

DYNAMIC GRAPHIC USER INTERFACE

RECEIVED

**EXAMINER:** 

Unassigned

DEC 1 7 2002

OFFICE OF PETITIONS

**GROUP ART UNIT:** 

2674

ATTY. DKT. NO.:

21685-06149

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX DAC, Commissioner For Patents, Washington, D.C. 2023 to the date shown below:

By:

Rimma Budnitskaya, Reg. No. 48,237

**BOX DAC OFFICE OF PETITIONS COMMISSIONER FOR PATENTS** WASHINGTON, DC. 20231

## PETITION UNDER 37 CFR 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

Applicant respectfully submits that the holding of abandonment in this application is in error because the Applicant timely responded to the Notice to File Missing Parts, the failure to respond being given as the reason for abandonment. Per a phone conference with the USPTO senior legal advisor Karin Ferriter, the Applicant respectfully requests withdrawal of the holding of abandonment in this application.

## STATEMENT OF FACTS

On November 13, 2000, the USPTO mailed a Notice to File Missing Parts of

Nonprovisional Application (hereinafter "Notice to File Missing Parts") to the Applicant. The

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Notice to File Missing Parts required: 1) submission of a signed oath and declaration within a two-month statutory period and 2) payment of a missing parts surcharge.

On January 10, 2001, the Applicant mailed to the USPTO the following documents (EXHIBIT ONE):

- 1. Copy of the Notice to File Missing Parts (Form PTO-1533);
  - 2. Declaration/Power of Attorney executed by the inventor on January 2, 2001;
  - 3. Check in the amount of \$65.00 for the surcharge fee; and
  - 4. Acknowledgment Postcard.

The USPTO received this submission on January 12, 2001, as shown by the date-stamp on an Acknowledgement Postcard that properly identified all the items submitted (EXHIBIT TWO). According to MPEP 503 the properly identified items include: "(a) applicant's name(s); (B) title of invention; (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing; (D) whether oath or declaration is included; (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and (F) amount and manner of paying the fee." (MPEP 503, p. 500-13, emphasis added.) The instant Acknowledgment Postcard states that the Declaration and a check in the amount of \$65.00 have been submitted. MPEP 503 further states that the Patent Office's policy regarding return postcards is: "The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off

and the postcard initialed by the person receiving the items." MPEP 503, p. 500-15, emphasis added.

The postcard returned from the Patent Office has **no** items crossed off. Thus, the Patent Office itself has confirmed that all submitted items were received within the period for response. The Patent Office's policy regarding return postcards is: "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." (MPEP 503, p. 500-14).

Between January 12, 2001 and November 22, 2002, the Applicant submitted various correspondence to the USPTO, such as an Information Disclosure Statement, Change in Power of Attorney, and Correspondence Address Change. No correspondence was received from the Patent Office in reply to these submissions.

On November 22, 2002, the Applicant received a Notice of Abandonment (EXHIBIT FOUR), mailed November 18, 2002, stating that the Applicant had failed to timely reply to the Notice of Missing Parts mailed on November 13, 2000.

Applicant's response to the Notice of Missing Parts was received by the USPTO, as evidenced by the Acknowledgement Postcard. Applicant's response included a copy of the Notice of Missing Parts prepared by the PTO that identified the application by its serial number, title, filing date, and inventor name. The transmittal forms prepared by the Applicant contained a minor typographical error identifying the application's serial number, but correctly identified the application's number, title, filing date, and inventor name. The transmittal forms identified the application by serial number 09/633,296 instead of the serial number 09/663,296.



The returned copy of the Notice to File Missing Parts, however, properly identified the application under its correct application serial number 09/663,296.

MPEP 502 states in part that "[a] minor error in the identification of the application can be corrected by the group provided the correct identification can be quickly discovered.

Examples of minor errors are transposed numbers, typographical errors, and listing the parent application number." MPEP 502, p. 500-6. Thus, the Patent Office could have quickly discovered the correct identification by either looking at the attached copy of the Notice to File Missing parts that properly identified the application by its serial number or by reviewing the correct information for title, filing date, and inventor name provided by the Applicant.

After reviewing the Notice of Abandonment, the Applicant discovered through the patent application retrieval (PAIR) system that the USPTO erroneously matched the response to the Notice to File Missing Parts timely submitted by the Applicant with the application serial number 09/633,296 instead of the application serial number 09/663,296 (EXHIBIT THREE). Thus, the Applicant's response to the Notice to File Missing Parts was attached to the wrong file. Moreover, the Examiner of the application identified by serial number 09/633,296 apparently did not notice that he had received correspondence intended for a *clearly* different application and merely identified the response as "miscellaneous correspondence." At no time was the Applicant notified of this error. In fact, the Applicant received the Notice of Abandonment almost two years after the application went abandoned.

On December 2, 2002, the Applicant's representative, practitioner Rimma Budnitskaya, contacted USPTO senior legal adviser, Karin Ferriter, regarding the Notice of Abandonment. In view of the above, Ms. Ferriter recommended that the Applicant petition the USPTO to withdraw the holding of abandonment in this application and to expunge previously submitted

information. A petition to expunge has not been submitted with this petition but may be submitted at a later time.

POINTS TO BE REVIEWED

The Applicant respectfully submits that the holding of abandonment in this application is in error because on January 10, 2001 the Applicant did timely mail to the USPTO an executed Declaration/Power of Attorney prior to the January 13, 2001 deadline for responding to the Notice to File Missing Parts. Moreover, the Patent Office received the response on January 12, 2001. The response provided more than enough information needed to identify the appropriate application. Thus, the Applicant fully complied with the provisions of 37 CFR 1.8

ACTION REQUESTED

In view of the above, the Applicant respectfully requests withdrawal of the holding of abandonment in this application.

(a) contrary to the reasons provided by the holding of abandonment.

Respectfully submitted, ALEXANDRE MARC JACQUES BROUAUX

Dated:  $\frac{12/10/92}{}$ 

Rimma Budnitskaya, Reg. No. 48,237

Fenwick & West LLP Two Palo Alto Square Palo Alto, CA 94306

Tel.: (415) 875-2401

Fax.: (415) 281-1350

enclosures:

- EXHIBIT 1) Response to the Notice to File Missing Parts, including: copy of the Transmittal Form including the Certificate of Mailing executed on January 10, 2001; copy of the Fee Transmittal Form for the surcharge for the Notice to File Missing Parts sent by the Applicant on January 10, 2001; copy of the Letter in Response to Notice to File Missing Parts executed on January 10, 2001; copy of the executed Declaration/Power of Attorney timely submitted by the Applicant on January 10, 2001 in response to the Notice to File Missing Parts; copy of the Notice to File Missing Parts sent by the Applicant on January 10, 2001; copy of the check number 74280 in the amount of \$65.00 for the surcharge fee.
- EXHIBIT 2) Copy of the acknowledgment postcard for submission that is the subject of Exhibit 1, showing the January 12, 2001 date-stamp of the USPTO's mailroom.
- EXHIBIT 3) Copy of the PAIR sheet for application serial number 09/633,296 indicating that the USPTO received the Applicant's submission on January 12, 2001 and matched it with the wrong application number.
- EXHIBIT 4) Copy of the Notice of Abandonment received on November 22, 2002.



PTO/SB/17 (1130) gh 10/31/2002. OMB 0651-0032

Approved for use through 10/31/2002. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT

(\$) 65

Co	mplete if Known	
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Application Number	09/633,296	
Filing Date	September 15	2000ECEIVED
First Named Inventor	Brouaux, Alex	kander
Examiner Name	unknown	DEC 1 7 2 002
Group Art Unit	2674	
Attorney Docket No.	8058-PA01	OFFICE OF PETYTIONS

The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:  Deposit Account Number  Deposit Account & McClain  Deposit Account & McClain  Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17  Applicant claims mail entity status.  See 37 CFR 1.27  2. Payment Enclosed: Credit card Money Order Other  FEE CALCULATION  1. BASIC FILING FEE  Large Entity Small Entity Fee	METHOD OF PAYMENT	FEE CALCULATION (continued)	
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*or number previously paid, if greater; For Reissues, see above *Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$) 65	· · · · · · · · · · · · · · · · · · ·	*Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$)	65

SUBMITTED BY				Complete (if	applicable)
Name (Print/Type)	KATHLEEN L. CONNELL	Registration No.	45,344	Telephone	619-238-0999
Signature	(attoog Conn			Date	Acm 16, 2001

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TRANSMITTAL FORM		TAL	Filing Date	
			First Named Inventor	SEPTEMBER 15, 2000  Brouaux, Alexander
(to be used fo	r all correspondence a	fter initial filing)	Group Art Unit	2674
			Examiner Name	unknown
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	SIGNATU	RE OF APPLICA	ANT, ATTORNEY, OR A	CENT
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Signature